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MR. WEBSTER'S SPEECH

ON

THE PRESIDENT'S PROTEST:

DELIVERED

IN THE SENATE OF THE UNITED STATES,

MAY 7, 1834.

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1834

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SPEECH.

Mr. President:

I feel, sir, the magnitude of this question. We are coming to a vote which cannot fail to produce important effects on the character of the Senate, and the character of the Government.

Unhappily, sir, the Senate finds itself involved in a controversy with the President of the United States; a man, who has rendered most distinguished services to his country, has hitherto possessed a degree of popular favor, perhaps never excelled, and whose honesty of motive, and integrity of purpose, are still maintained by those who admit that his administration has fallen into lamentable errors.

On some of the interesting questions, in regard to which the President and Senate hold opposite opinions, the more popular branch of the Legislature concurs with the Executive. It is not to be concealed that the Senate is engaged against imposing odds. It can sustain itself only by its own prudence and the justice of its cause. It has no patronage by which to secure friends; it can raise up no advocates through the dispensation of favors, for it has no favors to dispense. Its very constitution, as a body, whose members are elected for a long term, is capable of being rendered obnoxious, and is daily made subject of opprobrious remark. It is already denounced as independent of the people, and aristocratic. Nor is it, like the other House, powerful in its numbers; not being, like that, so large as that its members come constantly in direct and sympathetic contact with the whole people. Under these disadvantages, sir, which, we may be assured, will be pressed and urged to the utmost length, there is but one course for us. The Senate must stand on its rendered reasons. It must put forth the grounds of its proceedings, and it must then rely on the intelligence and patriotism of the people to carry it through the contest.

As an individual member of the Senate, it gives me great pain to be engaged in such a conflict with the Executive Government. The occurrences of the last session are fresh in all our recollections; and, having felt it to be my duty, at that time, to give my cordial support to highly important measures of the administration, I ardently hoped that nothing might occur to place me, afterwards, in an attitude of opposition. In all respects, and in every way, it would have been far more agreeable to me to have found nothing in the measures of the Executive Government which I could not cheerfully support. The present occasion of difference has not been sought or made by me. It is thrust upon me, in opposition to strong opinions and wishes, on my part not concealed. The interference with the public deposites dispelled all hope of continued concurrence with the administration; and was a measure so uncalled for, so unnecessary, and, in my judgment, so illegal and indefensible, that, with whatever reluctance it might be opposed, opposition was unavoidable.

The paper before us has grown out of the consequences of this interference. It is a paper which cannot be treated with indifference. The doctrines which it advances, the circumstances which have attended its transmission to the Senate, and the manner in which the Senate may now dispose of it, will form a memorable era in the history of the Government. We are either to enter it on our journals, assent to its sentiments, and submit to its rebuke; or we must answer it, with the respect due to the Chief Magistrate, but with such animadversion on its doctrines as they deserve, and with the firmness imposed upon us by our public duties.

I shall proceed, then, sir, to consider the circumstances which gave rise to this protest; to examine the principles which it attempts to establish; and to compare those principles with the constitution and the laws.

On the 28th day of March, the Senate adopted a resolution declaring that "*in the late executive proceedings in relation to the public revenue, the President had assumed a power not conferred by the constitution and laws, but in derogation of both.*" In that resolution I concurred.

It is not a direct question, now again before us, whether the President really had assumed such illegal power; that point is decided, so far as the Senate ever can decide it. But the protest denies that, supposing the President to have assumed such illegal power, the Senate could properly pass the resolution; or, what is the same thing, it denies that the Senate could, in this way, express any opinion about it. It denies that the Senate has any right, by resolution, in this or any other case, to express disapprobation of the President's conduct, let that conduct be what it may; and this, one of the leading doctrines of the protest, I propose to consider. But, as I concurred in the resolution of the 28th of March, and did not trouble the Senate, at that time, with any statement of my own reasons, I will avail myself of this opportunity to explain, shortly, what those reasons were.

In the first place, then, I have to say, that I did not vote for the resolution on the mere ground of the removal of Mr. Duane from the office of Secretary of the Treasury. Although I disapprove of the removal altogether, yet the power of removal does exist in the President, according to the established construction of the constitution; and, therefore, although, in a particular case, it may be abused, and, in my opinion, was abused in this case, yet its exercise cannot be justly said to be an assumption or usurpation. We must all agree that Mr. Duane is out of office. He has, therefore, been removed by a power constitutionally competent to remove him, whatever may be thought of the exercise of that power, under the circumstances of the case.

If, then, the act of removing the Secretary be not the assumption of power which the resolution declares, in what is that assumption found? Before giving a precise answer to this inquiry, allow me to recur to some of the principal previous events.

At the end of the last session of Congress, the public moneys of the United States were still in their proper place. That place was fixed by the law of the land, and no power of change was conferred on any other human being than the Secretary of the Treasury. On him the power of change was conferred, to be exercised by himself, if emergency should arise, and to be exercised for reasons which he was bound to lay before Congress. No other officer of the Government had the slightest pretence of authority to lay his hand on these moneys for the purpose of changing the place of their custody. All the other heads of Departments together could not touch them. The President could not touch them. The power of change was a trust confided to the discre-

tion of the Secretary, and to his discretion alone. The President had no more authority to take upon himself this duty, thus assigned expressly by law to the Secretary, than he had to make the annual report to Congress, or the annual commercial statements, or to perform any other service which the law specially requires of the Secretary. He might just as well sign the warrants for moneys, in the ordinary daily disbursements of Government, instead of the Secretary. The statute had assigned the especial duty of removing the deposites, if removed at all, to the Secretary of the Treasury, and to him alone. The consideration of the propriety, or necessity of removal, must be the consideration of the Secretary; the decision to remove, his decision; and the act of removal, his act.

Now, sir, on the 18th day of September last, a resolution was taken to remove these deposites from their legislative (that is to say, their legal) custody. *Whose resolution was this?* On the 1st day of October they were removed. And *by whose power was this done?* The papers necessary to accomplish the removal (that is, the orders and drafts) are, it is true, signed by the Secretary. The President's name does not appear to them; nor does the Secretary, in any of them, recite or declare that he does the act by direction of the President, or on the President's responsibility. In form, the whole proceeding is the proceeding of the Secretary, and, as such, had the legal effect. The deposites were removed. But whose act was it in truth and reality? Whose will accomplished it? *On whose responsibility was it adopted?*

These questions are all explicitly answered by the President himself, in the paper, under his own hand, read to the cabinet on the 18th of September, and published by his authority. In this paper the President declares, in so many words, *that he begs his cabinet to consider the proposed measure as his own; that its responsibility has been assumed by him; and that he names the first day of October as a period proper for its execution.*

Now, sir, it is precisely this which I deem an assumption of power not conferred by the constitution and laws. I think the law did not give this authority to the President, nor impose on him the responsibility of its exercise. It is evident that in this removal the Secretary was in reality nothing but the scribe: he was the pen in the President's hand, and no more. Nothing depended on his discretion, his judgment, or his responsibility. The removal, indeed, has been admitted and defended in the Senate, as the direct act of the President himself. This, sir, is what I call assumption of power. If the President had issued an order for the removal of the deposites in his own name, and under his own hand, it would have been an illegal order, and the Bank would not have been at liberty to obey it. For the same reason, if the Secretary's order had recited that it was issued by the President's direction, and on the President's authority, it would have shown, on its face, that it was illegal and invalid. No one can doubt that. The act of removal, to be lawful, must be the *bona fide* act of the Secretary; *his* judgment, the result of *his* deliberations, the volition of *his* mind. All are able to see the difference between the power to remove the Secretary from office, and the power to control him, in all or any of his duties, while in office. The law charges the officer, whoever he may be, with the performance of certain duties. The President, with the consent of the Senate, appoints an individual to be such officer, and this individual he may remove, if he so please; but, until removed, he is the officer, and remains charged with the duties of his station; duties which nobody else can perform, and for the neglect or violation of which he is liable to be impeached.

The distinction is visible and broad between the power of removal and the power to control an officer not removed. The President, it is true, may terminate his political life; but he cannot control his powers and functions, and act upon him as a mere machine, while he is allowed to live. This power of control and direction, no where given, certainly, by any express provision of the constitution or laws, is derived, by those who maintain it, from the right of removal; that is to say, it is a constructive power. But the right of removal itself is but a constructive power: it has no express warrant in the constitution. A very important power, then, is raised by construction, in the first place; and, being thus raised, it becomes a fountain, out of which other important powers, raised also by construction, are to be supplied. There is no little danger that such a mode of reasoning may be carried too far. It cannot be maintained that the power of direct control necessarily flows from the power of removal. Suppose it had been decided in 1789, when the question was debated, that the President does not possess the power of removal: will it be contended, that in that case his right of interference with the acts and duties of executive officers would be less than it now is? The reason of the thing would seem to be the other way. If the President may remove an incumbent when he becomes satisfied of his unfaithfulness and incapacity, there would appear to be less necessity to give him also a right of control, than there would be if he could not remove him.

We may try this question by supposing it to arise in a judicial proceeding. If the Secretary of the Treasury were impeached for removing the deposites, could he justify himself by saying that he did it by the President's direction? If he could, then no executive officer could ever be impeached who obeys the President; and the whole notion of making such officers impeachable at all would be farcical. If he could not so justify himself, (and all will allow he could not,) the reason can only be that the act of removal is his own act: the power, a power confided to him, for the just exercise of which the law looks to his discretion, his honesty, and his direct responsibility.

Now, sir, the President wishes the world to understand that he himself decided on the question of the removal of the deposites; that he took the whole responsibility of the measure upon himself; that he wished it to be considered *his own act;* that he not only himself decided that the thing should be done, but that he regulated its details also, and named the day for carrying it into effect.

I have always entertained a very erroneous view of the partition of powers, and of the true nature of official responsibility under our constitution, if this be not a plain case of the assumption of power.

The Legislature had fixed a place, by law, for the keeping of the public money. They had, at the same time, and by the same law, created and conferred a power of removal, to be exercised contingently. This power they had vested in the Secretary, by express words. The law did not say that the deposites should be made in the Bank unless the President should order otherwise; but it did say that they should be made there *unless the Secretary of the Treasury should order otherwise.* I put it to the plain sense and common candor of all men, whether the discretion which was thus to be exercised over the subject was not the Secretary's own personal discretion; and whether, therefore, the interposition of the authority of another, acting directly and conclusively on the subject, deciding the whole question, even in its particulars and details, be not an assumption of power?

The Senate regarded this interposition as an encroachment, by the Execu-

tive, on other branches of the Government; as an interference with the legislative disposition of the public treasure. It was strongly and forcibly urged, yesterday, by the honorable member from South Carolina, that the true and only mode of preserving any balance of power, in mixed governments, is to keep an exact balance. This is very true, and to this end encroachment must be resisted at the first step. The question is, therefore, whether, upon the true principles of the constitution, this exercise of power by the President can be justified. Whether the consequences be prejudicial or not, if there be an illegal exercise of power, it is to be resisted in the proper manner. Even if no harm or inconvenience result from transgressing the boundary, the intrusion is not to be suffered to pass unnoticed. Every encroachment, great or small, is important enough to awaken the attention of those who are intrusted with the preservation of a constitutional Government. We are not to wait till great public mischiefs come, till the Government is overthrown, or liberty itself put in extreme jeopardy. We should not be worthy sons of our fathers, were we so to regard great questions affecting the general freedom. Those fathers accomplished the revolution on a strict question of principle. The Parliament of Great Britain asserted a right to tax the colonies in all cases whatsoever, and it was precisely on this question that they made the revolution turn. The amount of taxation was trifling, but the claim itself was inconsistent with liberty; and that was, in their eyes, enough. It was against the recital of an act of Parliament, rather than against any suffering under its enactments, that they took up arms. They went to war against a preamble. They fought seven years against a declaration. They poured out their treasures and their blood like water, in a contest, in opposition to an assertion, which those less sagacious and not so well schooled in the principles of civil liberty, would have regarded as barren phraseology, or mere parade of words. They saw in the claim of the British Parliament a seminal principle of mischief, the germ of unjust power; they detected it, dragged it forth from underneath its plausible disguises, struck at it, nor did it elude either their steady eye, or their well-directed blow, till they had extirpated and destroyed it, to the smallest fibre. On this question of principle, while actual suffering was yet afar off, they raised their flag against a power to which, for purposes of foreign conquest and subjugation, Rome, in the height of her glory, is not to be compared; a power, which has dotted over the surface of the whole globe with her possessions and military posts, whose morning drum-beat, following the sun, and keeping company with the hours, circles the earth daily with one continuous and unbroken strain of the martial airs of England.

The necessity of holding strictly to the principle upon which free Governments are constructed, and to the precise lines which fix the partitions of power between different branches, is as plain, if not as cogent, as that of resisting, as our fathers did, the strides of the parent country upon the rights of the colonies; because, whether the power which exceeds its just limits be foreign or domestic, whether it be the encroachment of all branches on the rights of the people, or that of one branch on the rights of others, in either case the balanced and well-adjusted machinery of free government is disturbed, and, if the derangement go on, the whole system must fall.

But the case before us is not a case of merely theoretic infringement, nor is it one of trifling importance. Far otherwise. It respects one of the highest and most important of all the powers of Government; that is to say, the custody and control of the public money. The act of removing the deposites, which I now consider as the President's act, and which his friends on this

floor defend as his act, took the national purse from beneath the security and guardianship of the law, and disposed of its contents, in parcels, in such places of deposite as he chose to select. At this very moment every dollar of the public treasure is subject, so far as respects its custody and safe keeping, to his unlimited control. We know not where it is to-day; still less do we know where it may be to-morrow.

But, Mr. President, this is not all. There is another part of the case, which has not been so much discussed, but which appears to me to be still more indefensible in its character. It is something which may well teach us the tendency of power to move forward, with accelerated pace, if it be allowed to take the first step. The Bank of the United States, in addition to the services rendered to the Treasury, gave for its charter, and for the use of the public deposites, a *bonus*, or outright sum of one million and a half of dollars. This sum was paid by the Bank into the Treasury, soon after the commencement of its charter. In the act which passed both Houses for renewing the charter, in 1832, it was provided that the Bank, for the same consideration, should pay two hundred thousand dollars a year, during the period for which it was proposed to renew it. A similar provision is in the bill which I asked leave to introduce some weeks ago. Now, sir, this shows that the custody of the deposites is a benefit, for which a bank may well afford to pay a large annual sum. The banks which now hold the deposites pay nothing to the public; they give no *bonus*, they pay no annuity. But this loss of so much money is not the worst part of the case, nor that which ought most to alarm us. Although they pay nothing to the public, they do pay, nevertheless, such sums, and for such uses, as may be agreed upon *between themselves and the Executive Government.* We are officially informed that an officer is appointed by the Secretary of the Treasury to inspect or superintend these selected banks; and this officer is compensated by a salary fixed by the Executive, agreed to by the banks, and paid by them. I ask, sir, if there can be a more irregular, or a more illegal transaction than this? Whose money is it out of which this salary is paid? Is it not money justly due to the United States, and paid, because it is so due, for the advantage of holding the deposites? If a dollar is received on that account, is not its only true destination into the general treasury of the Government? And who has authority, without law, to create an office, to fix a salary, and to pay that salary out of this money? Here is an inspector, or supervisor of the deposite banks. But what law has provided for such an officer? What commission has he received? Who concurred in his appointment? What oath does he take? How is he to be punished, or impeached, if he colludes with any of these banks to embezzle the public money, or defraud the Government? The value of the use of this public money to the deposite banks is probably two hundred thousand dollars a year; or, if less than that, it is yet, certainly, a very great sum. May the President appoint whatever officers he pleases, with whatever duties he pleases, and pay them as much as he pleases *out of these moneys thus paid by the banks, for the sake of having the deposites?*

Mr. President, the executive claim of power is exactly this, that the President may keep the money of the public in whatever banks he chooses, on whatever terms he chooses, and to apply the sums which these banks are willing to pay for its use to whatever purposes he chooses. These sums are not to come into the general treasury. They are to be appropriated before they get there; they are never to be brought under the control of Congress; they are to

be paid to officers and agents not known to the law, not nominated to the Senate, and responsible to nobody but the Executive itself. I ask gentlemen, if all this be lawful? Are they prepared to defend it? Will they stand up and justify it? In my opinion, sir, it is a clear and a most dangerous assumption of power. It is the creation of office, without law; the appointment to office, without consulting the Senate; the establishment of a salary, without law; and the payment of that salary out of a fund which itself is derived from the use of the public treasures. This, sir, is my other reason for concurring in the vote of the 28th of March; and on these grounds I leave the propriety of that vote, so far as I am concerned with it, to be judged of by the country.

But, sir, the President denies the power of the Senate to pass any such resolution, on any ground whatever. Suppose the declaration contained in the resolution to be true; suppose the President had, in fact, assumed powers not granted to him; does the Senate possess the right to declare its opinion, affirming this fact, or does it not? I maintain the Senate does possess such a power; the President denies it.

Mr. President, we need not look far, nor search deep, for the foundation of this right in the Senate. It is clearly visible, and close at hand. In the first place, it is the right of self-defence. In the second place, it is a right founded on the duty of representative bodies, in a free Government, to defend the public liberty against encroachment. We must presume that the Senate honestly entertained the opinion expressed in the resolution of the 28th of March; and, entertaining that opinion, its right to express it is but the necessary consequence of its right to defend its own constitutional authority, as one branch of the Government. This is its clear right, and this, too, is its imperative duty.

If one, or both, the other branches of the Government happen to do that which appears to us inconsistent with the constitutional rights of the Senate, will any one say that the Senate is yet bound to be passive, and to be silent; to do nothing, and to say nothing? Or if one branch appears to encroach on the rights of the other two, have these two no power of remonstrance, complaint, or resistance? Sir, the question may be put in a still more striking form. Has the Senate a right *to have an opinion* in a case of this kind? If it may have an opinion, how is that opinion to be ascertained but by resolution and vote? The objection must go the whole length; it must maintain that the Senate has not only no right to express opinions, but no right to form opinions, on the conduct of the Executive Government, though in matters intimately affecting the powers and duties of the Senate itself. It is not possible, sir, that such a doctrine can be maintained for a single moment. All political bodies resist what they deem encroachments, by resolutions expressive of their sentiments, and their purpose to resist such encroachments. When such a resolution is presented for its consideration, the question is, whether it be true; not whether the body has authority to pass it, admitting it to be true. The Senate, like other public bodies, is perfectly justifiable in defending, in this mode, either its legislative or executive authority. The usages of Parliament, the practice in our State Legislatures and Assemblies, both before and since the Revolution, and precedents in the Senate itself, fully maintain this right. The case of the Panama mission is in point. In that case, Mr. Branch, from North Carolina, introduced a resolution, which, after reciting that the President, in his annual message, and in his communication to the Senate, had asserted that he possessed an authority to make certain appointments, *although the appointments had not been made*, went on to declare that "*a silent acquiescence, on the part of this body,*

may, at some future time, be drawn into dangerous precedent;" and to resolve, therefore, that the President does not possess the right or power said to be claimed by him. This resolution was discussed, and finally laid on the table. But the question discussed was, whether the resolution was correct, in fact and principle; not whether the Senate had any right to pass such resolution. So far as I remember, no one pretended that, if the President had exceeded his authority, the Senate might not so declare by resolution. No one ventured to contend that, whether the rights of the Senate were invaded or not, the Senate must hold its peace.

The protest labors strenuously to show that the Senate adopted the resolution of the 28th of March, under its *judicial* authority. The reason of this attempt is obvious enough. If the Senate, in its judicial character, has been trying the President, then he has not had a regular and formal trial; and, on that ground, it is hoped, the public sympathy may be moved. But the Senate has acted not in its judicial, but in its legislative capacity. As a legislative body, it has defended its own just authority, and the authority of the other branch of the Legislature. Whatever attacks our own rights and privileges, or whatever encroaches on the power of both Houses, we may oppose and resist, by declaration, resolution, or other similar proceeding. If we look to the books of precedents, if we examine the journals of legislative bodies, we find, every where, instances of such proceedings.

It is to be observed, sir, that the protest imposes silence on the House of Representatives as well as on the Senate. It declares that no power is conferred on either branch of the Legislature, to consider or decide upon official acts of the Executive, for the purpose of censure, and without a view to legislation or impeachment. This, I think, sir, is pretty high-toned pretension. According to this doctrine, neither House can assert its own rights, however the Executive might assail them; neither House could point out the danger to the people, however fast executive encroachment might be extending itself, or whatever danger it might threaten to the public liberties. If the two Houses of Congress may not express an opinion of executive conduct by resolution, there is the same reason why they should not express it in any other form, or by any other mode of proceeding. Indeed, the protest limits both Houses, expressly, to the case of impeachment. If the House of Representatives are not about to impeach the President, they have nothing to say of his measures or of his conduct; and unless the Senate are engaged in trying an impeachment, their mouths, too, are stopped. It is the practice of the Executive to send us an annual message, in which he rehearses the general proceedings of the Executive for the past year. This message we refer to our committees for consideration. But, according to the doctrine of the protest, they can express no opinion upon any executive proceeding, upon which it gives information. Suppose the President had told us, in his last annual message, what he had previously told us in his cabinet paper, that the removal of the deposites was *his* act, done on *his* responsibility; and that the Secretary of the Treasury had exercised no discretion, formed no judgment, presumed to have no opinion whatever, on the subject. This part of the message would have been referred to the Committee on Finance; but what could they say? They think it shows a plain violation of the constitution and the laws; but the President is not impeached; therefore, they can express no censure. They think it a direct invasion of legislative power, but they must not say so. They may, indeed, commend, if they can. The grateful business of praise is lawful to them; but if, instead of commendation and applause, they

find cause for disapprobation, censure, or alarm, the protest enjoins upon them absolute silence.

Formerly, sir, it was a practice for the President to meet both Houses, at the opening of the session, and deliver a speech, as is still the usage of some of the State Legislatures. To this speech there was an answer from each House, and those answers expressed, freely, the sentiments of the House upon all the merits and faults of the administration. The discussion of the topics contained in the speech, and the debate on the answers, usually drew out the whole force of parties, and lasted sometimes a week. President Washington's conduct, in every year of his administration, was thus freely and publicly canvassed. He did not complain of it; he did not doubt that both Houses had a perfect right to comment, with the utmost latitude, consistent with decorum, upon all his measures. Answers, or amendments to answers, were not unfrequently proposed, very hostile to his own course of public policy, if not sometimes bordering on disrespect. And when they did express respect and regard, there were votes ready to be recorded against the expression of those sentiments. To all this President Washington took no exception; for he well knew that these, and similar proceedings, belonged to the power of popular bodies. But if the President were now to meet us with a speech, and should inform us of measures, adopted by himself in the recess, which should appear to us the most plain, palpable, and dangerous violations of the constitution, we must, nevertheless, either keep respectful silence, or fill our answer merely with courtly phrases of approbation.

Mr. President, I know not who wrote this protest, but I confess I am astonished, truly astonished, as well at the want of knowledge which it displays of constitutional law, as at the high and dangerous pretensions which it puts forth. Neither branch of the Legislature can express censure upon the President's conduct! Suppose, sir, that we should see him enlisting troops, and raising an army, can we say nothing, and do nothing? Suppose he were to declare war against a foreign power, and put the army and the fleet in action; are we still to be silent? Suppose we should see him *borrowing money on the credit of the United States;*" are we yet to wait for impeachment? Indeed, sir, in regard to this borrowing money on the credit of the United States, I wish to call the attention of the Senate not only to what might happen, but to what has actually happened. We are informed that the Post Office Department, a Department over which the President claims the same control as over the rest, *has actually borrowed near half a million of money on the credit of the United States.*

Mr. President, the first power granted to Congress by the constitution is the power to lay taxes; the second, the power to borrow money on the credit of the United States. Now, sir, where does the Executive find its authority, in or through any Department, to borrow money without authority of Congress? This proceeding appears to me wholly illegal, and reprehensible in a very high degree. It may be said that it is not true that this money is borrowed on the credit of the United States, but that it is borrowed on the credit of the Post Office Department. But that would be mere evasion. The Department is but a name. It is an office, and nothing more. The banks have not lent this money to any officer. If Congress should abolish the whole Department to-morrow, would the banks not expect the United States to replace this borrowed money? The money, then, is borrowed on the credit of the United States; an act which Congress alone is competent to authorize. If the Post Office Department may borrow money, so may the War

Department, and the Navy Department. If half a million may be borrowed, ten millions may be borrowed. What, then, if this transaction shall be justified, is to hinder the Executive from borrowing money, to maintain fleets and armies, or for any other purpose, at his pleasure, without any authority of law? Yet, even this, according to the doctrine of the protest, we have no right to complain of. We have no right to declare that an executive department has violated the constitution and broken the law, by borrowing money on the credit of the United States. Nor could we make a similar declaration, if we were to see the Executive, by means of this borrowed money, enlisting armies and equipping fleets. And yet, sir, the President has found no difficulty, heretofore, in expressing his opinions, *in a paper, not called for by the exercise of any official duty*, upon the conduct and proceedings of the two Houses of Congress. At the commencement of this session he sent us a message, commenting on the land bill which the two Houses passed at the end of the last session. That bill he had not approved, nor had he returned it with objections. Congress was dissolved; and the bill, therefore, was completely dead, and could not be revived. No communication from him could have the least possible effect as an official act. Yet he saw fit to send a message on the subject, and in that message he very freely declares his opinion that the bill which had passed both Houses *began with an entire subversion of every one of the compacts by which the United States became possessed of their western domain;* that one of its provisions *was in direct and undisguised violation of the pledge given by Congress to the States;* that the constitution provides that these compacts shall be untouched by the legislative power, which can only make needful rules and regulations; and that all beyond that is *an assumption of undelegated* power.

These are the terms in which the President speaks of an act of the two Houses; in no official paper, in no communication which it was necessary for him to make to them; but in a message, adopted only as a mode through which to make public these opinions. After this, it would seem too late to enjoin on the Houses of Congress a total forbearance from all comment on the measures of the Executive.

Not only is it the right of both Houses, or of either, to resist, by vote, declaration, or resolution, whatever it may deem an encroachment of executive power, but it is also undoubtedly the right of either House to oppose, in like manner, any encroachment by the other. The two Houses have each its own appropriate powers and authorities, which it is bound to preserve. They have, too, different constituents. The members of the Senate are representatives of States; and it is in the Senate alone that the four and twenty States, as political bodies, have a direct influence in the legislative and executive powers of this Government. He is a strange advocate of State rights, who maintains that this body, thus representing the States, and thus being the strictly federal branch of the Legislature, may not assert and maintain all and singular its own powers and privileges, against either or both of the other branches.

If any thing be done or threatened derogatory to the rights of the States, as secured by the organization of the Senate, may we not lift up our voices against it? Suppose the House of Representatives should vote that the Senate ought not to propose amendments to revenue bills; would it be the duty of the Senate to take no notice of such proceeding? Or, if we were to see the President issuing commissions to office to persons who had never been nominated to the Senate, are we not to remonstrate?

Sir, there is no end of cases, no end of illustrations. The doctrines of the protest, in this respect, cannot stand the slightest scrutiny; they are blown away by the first breath of discussion.

And yet, sir, it is easy to perceive why this right of declaring its sentiments, respecting the conduct of the Executive, is denied to either House, in its legislative capacity. It is merely that the Senate might be presented in the odious light of *trying* the President, judicially, without regular accusation or hearing. The protest declares that the President is *charged with a crime, and, without hearing or trial, found guilty and condemned.* This is evidently an attempt to appeal to popular feeling, and to represent the President as unjustly treated and unfairly tried. Sir, it is a false appeal. The President has not been tried at all; he has not been accused; he has not been charged with crime; he has not been condemned. Accusation, trial, and sentence are terms belonging to judicial proceedings. But the Senate has been engaged in no such proceeding. The resolution of the 28th of March was not an exercise of judicial power, either in form, in substance, or in intent. Every body knows that the Senate can exercise no judicial power until articles of impeachment are brought before it. It is then to proceed, by accusation and answer, hearing, trial, and judgment. But there has been no impeachment, no answer, no hearing, no judgment. All that the Senate did was to pass a resolution, in legislative form, declaring its opinion of certain acts of the Executive. This resolution imputed no crime; it charged no corrupt motive; it proposed no punishment. It was directed, not against the President, personally, but against the act; and that act it declared to be, in its judgment, an assumption of authority, not warranted by the constitution.

It is in vain that the protest attempts to shift the resolution on to the judicial character of the Senate. The case is too plain for such an argument to be plausible. But in order to lay some foundation for it, the protest, as I have already said, contends that neither the Senate, nor the House of Representatives, can express its opinions on the conduct of the President, except in some form connected with impeachment; so that if the power of impeachment did not exist, these two Houses, though they be representative bodies, though one of them be filled by the immediate representatives of the people, though they be constituted like other popular and representative bodies, could not utter a syllable, although they saw the Executive either trampling on their own rights and privileges, or grasping at absolute authority and dominion over the liberties of the country! Sir, I hardly know how to speak of such claims of impunity for executive encroachment. I am amazed that any American citizen should draw up a paper containing such lofty pretensions; pretensions, which would have been met with scorn, in England, at any time since the Revolution of 1688. A man who should stand up, in either House of the British Parliament, to maintain that the House could not, by vote or resolution, maintain its own rights and privileges, would make even the tory benches hang their heads for very shame. There was, indeed, a time when such proceedings were not allowed. Some of the kings of the Stuart race would not tolerate them. A signal instance of royal displeasure with the proceedings of Parliament occurred in the latter part of the reign of James the First. The House of Commons had spoken, on some occasion, "*of its own undoubted rights and privileges.*" The King thereupon sent them a letter, declaring that *he would not allow that they had any undoubted rights; but that what they enjoyed they might still hold by his own royal grace and permission.* Sir Edward Coke and Mr. Granville were not sa-

tisfied with this title to their privileges; and, under their lead, the House entered on its journals a resolution, asserting its privileges, *as its own undoubted right*, and manifesting a determination to maintain them as such. This, says the historian, so enraged His Majesty, that he sent for the journal, had it brought into the council, and there, in the presence of his lords and great officers of state, tore out the offensive resolution with his own royal hand. He then dissolved Parliament, and sent its most refractory members to the Tower. I have no fear, certainly, sir, that this English example will be followed, on this occasion, to its full extent; nor would I insinuate that any thing outrageous has been thought of, or intended, except outrageous pretensions; but such pretensions I must impute to the author of this protest, whoever that author be.

When this and the other House shall lose the freedom of speech and debate; when they shall surrender the rights of publicly and freely canvassing all important measures of the Executive; when they shall not be allowed to maintain their own authority and their own privileges by vote, declaration, or resolution, they will then be no longer free representatives of a free people, but slaves themselves, and fit instruments to make slaves of others.

The protest, Mr. President, concedes what it doubtless regards as a liberal right of discussion to the people themselves. But its language, even in acknowledging this right of the *people* to discuss the conduct of their servants, is qualified and peculiar. The free people of the United States, it declares, have an undoubted right to discuss the official conduct of the President, in such language and form as they may think proper, "*subject only to the restraints of truth and justice.* But then who is to be judge of this truth and justice? Are the people to judge for themselves, or are others to judge for them? The protest is here speaking of *political* rights, and not moral rights; and if restraints are imposed on *political* rights, it must follow, of course, that others are to decide, whenever the case arises, whether these restraints have been violated. It is strange that the writer of the protest did not perceive that, by using this language, he was pushing the President into a direct avowal of the doctrines of 1798. The text of the protest and the text of the obnoxious act of that year are nearly identical.

But, sir, if the people have a right to discuss the official conduct of the Executive, so have their representatives. We have been taught to regard a representative of the people as a sentinel on the watch-tower of liberty. Is he to be blind, though visible danger approaches? Is he to be deaf, though sounds of peril fill the air? Is he to be dumb, while a thousand duties impel him to raise the cry of alarm? Is he not, rather, to catch the lowest whisper which breathes intention or purpose of encroachment on the public liberties, and to give his voice breath and utterance at the first appearance of danger? Is not his eye to traverse the whole horizon, with the keen and eager vision of an unhooded hawk, detecting, through all disguises, every enemy advancing, in any form, towards the citadel which he guards? Sir, this watchfulness for public liberty, this duty of foreseeing danger and proclaiming it, this promptitude and boldness in resisting attacks on the constitution from any quarter, this defence of established landmarks, this fearless resistance of whatever would transcend or remove them, all belong to the representative character, are interwoven with its very nature, and of which it cannot be deprived, without converting an active, intelligent, faithful agent of the people into an unresisting and passive instrument of power. A representative body which gives up these rights and duties, gives itself up. It is a representative body

no longer. It has broken the tie between itself and its constituents, and henceforth is fit only to be regarded as an inert, self-sacrificed mass, from which all appropriate principle of vitality has departed forever.

I have thus endeavored to vindicate the right of the Senate to pass the resolution of the 28th of March, notwithstanding the denial of that right in the protest.

But there are other sentiments and opinions expressed in the protest, of the very highest importance, and which demand nothing less than our utmost attention.

The first object of a free people is the preservation of their liberty; and liberty is only to be preserved by maintaining constitutional restraints and just divisions of political power. Nothing is more deceptive or more dangerous than the pretence of a desire to simplify government. The simplest Governments are despotisms; the next simplest, limited monarchies; but all republics, all Governments of law, must impose numerous limitations and qualifications of authority, and give many positive and many qualified rights. In other words, they must be subject to rule and regulation. This is the very essence of free political institutions. The spirit of liberty is, indeed, a bold and fearless spirit; but it is also a sharp-sighted spirit; it is a cautious, sagacious, discriminating, far-seeing intelligence; it is jealous of encroachment, jealous of power, jealous of man. It demands checks, it seeks for guards, it insists on securities; it entrenches itself behind strong defences, and fortifies, with all possible care, against the assaults of ambition and passion. It does not trust the amiable weaknesses of human nature, and therefore it will not permit power to overstep its prescribed limits, though benevolence, good intent, and patriotic purpose come along with it. Neither does it satisfy itself with flashy and temporary resistance to illegal authority. Far otherwise. It seeks for duration and permanence. It looks before and after; and, building on the experience of ages which are past, it labors diligently for the benefit of ages to come. This is the nature of constitutional liberty; and this is *our* liberty, if we will rightly understand and preserve it. Every free Government is necessarily complicated, because all such Governments establish restraints, as well on the power of Government itself, as on that of individuals. If we will abolish the distinction of branches, and have but one branch; if we will abolish jury trials, and leave all to the judge; if we will then ordain that the legislator shall himself be that judge; and if we will place the executive power in the same hands, we may readily simplify government. We may easily bring it to the simplest of all possible forms, a pure despotism. But a separation of departments, so far as practicable, and the preservation of clear lines of division between them, is the fundamental idea in the creation of all our constitutions; and, doubtless, the continuance of regulated liberty depends on maintaining these boundaries.

In the progress, sir, of the Government of the United States, we seem exposed to two classes of dangers or disturbances; one external, the other internal. It may happen that collisions arise between this Government and the Governments of the States. That case belongs to the first class. A memorable instance of this kind existed last year. It was my conscientious opinion, on that occasion, that the authority claimed by an individual State was subversive of the just powers of this Government, and, indeed, incompatible with its existence. I gave a hearty co-operation, therefore, to measures which the crisis seemed to require. We have now before us what appears, to my judgment, to be an instance of the latter kind. A contest has arisen between different branches of the same Government, interrupting their

harmony, and threatening to disturb their balance. It is of the highest importance, therefore, to examine the question carefully, and to decide it justly.

The separation of the powers of Government into three departments, though all our constitutions profess to be founded on it, has, nevertheless, never been perfectly established in any Government of the world, and, perhaps, never can be. The general principle is of inestimable value, and the leading lines of distinction sufficiently plain; yet there are powers of so undecided a character, that they do not seem necessarily to range themselves under either head. And most of our constitutions, too, having laid down the general principle, immediately create exceptions. There do not exist in the general science of government, or the received maxims of political law, such precise definitions as enable us always to say of a given power whether it be legislative, executive, or judicial. And this is one reason, doubtless, why the constitution, in conferring power on all the departments, proceeds not by general definition, but by specific enumeration. And again, it grants a power in general terms, but yet, in the same, or some other article or section, imposes a limitation or qualification on the grant; and the grant and the limitation must, of course, be construed together. Thus the constitution says that all legislative power, therein granted, shall be vested in Congress, which Congress shall consist of a Senate and House of Representatives; and yet, in another article, it gives to the President a qualified negative over all acts of Congress. So the constitution declares that the judicial power shall be vested in one Supreme Court, and such inferior courts as Congress may establish. It gives, nevertheless, in another provision, judicial power to the Senate; and, in like manner, though it declares that the executive power shall be vested in the President, using, in the immediate context, no words of limitation, yet it elsewhere subjects the treaty-making power, and the appointing power, to the concurrence of the Senate. The irresistible inference, from these considerations, is, that the mere nomination of a department, as one of the three great and commonly acknowledged departments of Government, does not confer on that department any power at all. Notwithstanding the departments are called the legislative, the executive, and the judicial, we must yet look into the provisions of the constitution itself, in order to learn, first, what powers the constitution regards as legislative, executive, and judicial; and, in the next place, what portions or quantities of these powers are conferred on the respective departments; because no one will contend that *all* legislative power belongs to Congress, *all* executive power to the President, or *all* judicial power to the courts of the United States.

The three first articles of the constitution, as all know, are employed in prescribing the organization, and enumerating the powers, of the three departments. The first article treats of the Legislature, and its first section is: "All legislative power, *herein granted*, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The second article treats of the executive power, and its first section declares that "the executive power shall be vested in a President of the United States of America."

The third article treats of the judicial power, and its first section declares that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish."

It is too plain to be doubted, I think, sir, that these descriptions of the persons or officers, in whom the executive and the judicial powers are to be

vested, no more define the extent of the grant of those powers, than the words quoted from the first article describe the extent of the legislative grant to Congress. All these several titles, heads of articles, or introductory clauses, with the general declarations which they contain, serve to designate the departments, and to mark the general distribution of powers; but in all the departments, in the executive and judicial as well as in the legislative, it would be unsafe to contend for any specific power under such clauses.

If we look into the State constitutions, we shall find the line of distinction between the departments still less perfectly drawn, although the general principle of the distinction is laid down in most of them, and, in some of them, in very positive and emphatic terms. In some of these States, notwithstanding the principle of distribution is adopted and sanctioned, the Legislature appoints the judges; and in others it appoints both the Governor and the judges; and in others again, it appoints not only the judges, but all other officers.

The inferences which, I think, follow from these views of the subject are two: First, that the denomination of a department does not fix the limits of the powers conferred on it, nor even their exact nature; and, second, (which, indeed, follows from the first,) that, in our American Governments, the chief Executive Magistrate does not necessarily, and by force of his general character of Supreme Executive, possess the appointing power. He may have it, or he may not, according to the particular provisions applicable to each case, in the respective constitutions.

The President appears to have taken a different view of this subject. He seems to regard the appointing power as originally and inherently in the Executive, and as remaining absolute in his hands, except so far as the constitution restrains it. This I do not agree to, and shall have occasion hereafter to examine the question further. I have intended, thus far, only to insist on the high and indispensable duty of maintaining the division of power, *as the constitution has marked that division out;* and to oppose claims of authority not founded on express grants or necessary implication, but sustained merely by argument, or inference, from names or denominations given to departments.

Mr. President, the resolutions now before us declare, that the protest asserts powers as belonging to the President, inconsistent with the authority of the two Houses of Congress, and inconsistent with the constitution; and that the protest itself is a breach of privilege. I believe all this to be true.

The doctrines of the protest are inconsistent with the authority of the two Houses, because, in my judgment, they deny the just extent of the law-making power. I take the protest as it was sent to us, without inquiring how far the subsequent message has modified or explained it. It is singular, indeed, that a paper, so long in preparation, so elaborate in composition, and which is put forth for so high a purpose as the protest avows, should not be able to stand an hour's discussion before it became evident that it was indispensably necessary to alter or explain its contents. Explained, or unexplained, however, the paper contains sentiments which justify us, as I think, in adopting these resolutions.

In the first place, I think the protest a clear breach of privilege. It is a reproof, or rebuke, of the Senate, in language hardly respectful, for the exercise of a power clearly belonging to it as a legislative body. It entirely misrepresents the proceedings of the Senate. I find this paragraph in it, among others of a similar tone and character: " A majority of the Senate, " whose interference with the preliminary question has, for the best of all " reasons, been studiously excluded, anticipate the action of the House of

" Representatives, assume not only the function which belongs exclusively " to that body, but convert themselves into accusers, witnesses, counsel, and " judges, and prejudge the whole case. Thus presenting the appalling spec- " tacle, in a free State, of judges going through a labored preparation for an " impartial hearing and decision, by a previous *ex parte* investigation and " sentence against the supposed offender."

Now, sir, this paragraph, I am bound to say, is a total misrepresentation of the proceedings of the Senate. A majority of the Senate have not anticipated the House of Representatives; they have not assumed the functions of that body; they have not converted themselves into accusers, witnesses, counsel, or judges. They have made no *ex parte* investigation; they have given no sentence. This paragraph is an elaborate perversion of the whole design and the whole proceedings of the Senate. A protest, sent to us by the President, against votes which the Senate has an unquestionable right to pass, and containing, too, such a misrepresentation of these votes as this paragraph manifests, is a breach of privilege.

But there is another breach of privilege. The President interferes between the members of the Senate and their constituents, and charges them with acting contrary to the will of those constituents. He says it is his right and duty to look to the journals of the Senate, to ascertain who voted for the resolution of the 28th of March, and then to show that individual Senators have, by their votes on that resolution, disobeyed the instructions, or violated the known will of the Legislatures who appointed them. All this he claims, as his right and his duty. And where does he find any such right, or any such duty? What right has he to send a message to either House of Congress, telling its members that they disobey the will of their constituents? Has any English sovereign, since Cromwell's time, dared to send such a message to Parliament? Sir, if he can tell us that some of us disobey our constituents, he can tell us that all do so; and if we consent to receive this language from him, there is but one remaining step; and that is, that since we thus disobey the will of our constituents, he should disperse us, and send us home. In my opinion, the first step in this process is as distinct a breach of privilege as the last. If Cromwell's examples shall be followed out, it will not be more clear then than it is now, that the privileges of the Senate have been violated. There is yet something, sir, which surpasses all this; and that is, that after this direct interference, after pointing out those Senators whom he would represent as having disobeyed the known will of their constituents, *he disclaims all design of interfering at all!* Sir, who could be the writer of a message, which, in the first place, makes the President assert such monstrous pretensions, and, in the next line, affront the understanding of the Senate by disavowing all right to do that very thing which he is doing? If there be any thing, sir, in this message, more likely than the rest of it to move one from his equanimity, it is this disclaimer of all design to interfere with the responsibility of members of the Senate to their constituents, after such interference had already been made, in the same paper, in the most objectionable and offensive form. If it were not for the purpose of telling these Senators that they disobeyed the will of the Legislatures of the States they represent, *for what purpose was it* that the protest has pointed out the four Senators, and paraded against them the sentiments of their Legislatures? There can be no other purpose. The protest says, indeed, that " these facts belong to the history of these proceedings!" To the history of what proceedings? To any proceeding to which the President was party? To any proceeding to

which the Senate was party? Have they any thing to do with the resolution of the 28th of March? But it adds, that these facts *are important to the just development of the principles and interests involved in the proceedings.* All this might be said of any other facts. It is mere words. To what principles, to what interests, are these facts important? They cannot be important but in one point of view; and that is, as proof, or evidence, that the Senators have disobeyed instructions, or acted against the known will of their constituents, in disapproving the President's conduct. They have not the slightest bearing in any other way. They do not make the resolution of the Senate more or less true, nor its right to pass it more or less clear. Sir, these proceedings of the Legislatures were introduced into this protest for the very purpose, and no other, of showing that members of the Senate have acted contrary to the will of their constituents. Every man sees and knows this to have been the sole design; and any other pretence is a mockery to our understandings. And this purpose is, in my opinion, an unlawful purpose; it is an unjustifiable intervention between us and our constituents; and is, therefore, a manifest and flagrant breach of privilege.

In the next place, the assertions of the protest are inconsistent with the just authority of Congress, because they claim for the President a power, independent of Congress, to possess the custody and control of the public treasures. Let this point be accurately examined; and, in order to avoid mistake, I will read the precise words of the protest:

"The custody of the public property, under such regulations as may be "prescribed by legislative authority, has always been considered an appro- "priate function of the executive department in this and all other Govern- "ments. In accordance with this principle, every species of property "belonging to the United States, (excepting that which is in the use of the "several co-ordinate departments of the Government, as means to aid them "in performing their appropriate functions,) is in charge of officers appoint- "ed by the President, whether it be lands, or buildings, or merchandise, or "provisions, or clothing, or arms and munitions of war. The superintend- "ents and keepers of the whole are appointed by the President, and re- "movable at his will.

"Public money is but a species of public property. It cannot be raised "by taxation or customs, nor brought into the treasury in any other way "except by law; but whenever or howsoever obtained, its custody always "has been, and always must be, unless the constitution be changed, intrusted "to the executive department. No officer can be created by Congress, for "the purpose of taking charge of it, whose appointment would not, by the "constitution, at once devolve on the President, and who would not be re- "sponsible to him for the faithful performance of his duties."

And, in another place, it declares that "Congress cannot, therefore, take out of the hands of the executive department the custody of the public property or money, without an assumption of executive power, and a subversion of the first principles of the constitution." These, sir, are propositions which cannot receive too much attention. They affirm, that the custody of the public money constitutionally and necessarily belongs to the Executive; and that, until the constitution is changed, Congress cannot take it out of his hands, nor make any provision for its custody, except by such superintendents and keepers as are appointed by the President, and removable at his will. If these assertions be correct, we have, indeed, a singular constitution for a republican Government; for we give the Executive the

control, the custody, and the possession of the public treasury, by original constitutional provision; and when Congress appropriates, it appropriates only what is already in the President's hands.

Sir, I hold these propositions to be sound in neither branch. I maintain that the custody of the public money does not, necessarily, belong to the Executive, under this Government; and I hold, that Congress may so dispose of it, that it shall be under the superintendence of keepers not appointed by the President, nor removable at his will. I think it competent for Congress to declare, as Congress did declare in the Bank charter, that the public deposites should be made in the Bank. When in the Bank, they were not kept by persons appointed by the President, or removable at his will. He could not change that custody, nor could it be changed at all, but according to provisions made in the law itself. There was, indeed, a provision in the law authorizing the *Secretary* to change the custody. But, suppose there had been no such provision; suppose the contingent power had not been given to the Secretary, would it not have been a lawful enactment? Might not the law have provided that the public moneys should remain in the Bank, until Congress itself should otherwise order, leaving no power of removal any where else? And if such provision had been made, what power, or custody, or control, would the President have possessed over them? Clearly, none at all. The act of May, 1800, directed custom-house bonds, in places where the Bank, which was then in existence, was situated, or in which it had branches, to be deposited in the Bank or its branches for collection, *without the reservation of any power of removal to the Secretary or any body else.* Now, sir, this was an unconstitutional law, if the protest, in the part now under consideration, be correct; because it placed the public money in a custody beyond the control of the President, and in hands of keepers not appointed by him, nor removable at his pleasure. One may readily discern, sir, the process of reasoning by which the author of the protest brought himself to the conclusion that Congress could not place the public moneys beyond the President's control. It is all founded on the power of appointment, and the power of removal. These powers, it is supposed, must give the President complete control and authority over those who actually hold the money, and, therefore, must necessarily subject its custody, at all times, to his own individual will. This is the argument.

It is true, that the appointment of all public officers, with some exceptions, is, by the constitution, given to the President, with the consent of the Senate; and as, in most cases, public property must be held by some officer, its keepers will generally be persons so appointed. But this is only the common, not a necessary consequence, of giving the appointing power to the President and Senate. Congress may still, if it shall so see fit, place the public treasure in the hand of no officer appointed by the President, or removable by him, but in hands quite beyond his control. Subject to one contingency only, it did this very thing by the charter of the present Bank; and it did the same thing absolutely, and subject to no contingency, by the law of 1800. The protest, in the first place, seizes on the fact that all officers must be appointed by the President, or on his nomination; it then assumes the next step, that all officers are, and *must be*, removable at his pleasure; and then, insisting that public money, like other public property, must be kept by *some public officer*, it thus arrives at the conclusion that it *must* always be in the hands of those who are appointed by the President, and who are removable at his pleasure. And it is very clear that the protest means to maintain that the *tenure of office*

cannot be so regulated by law, as that public officers shall not be removable at the pleasure of the President.

The President considers the right of removal as a fixed, vested constitutional right, which Congress cannot limit, control, or qualify, until the constitution shall be altered. This, sir, is doctrine which I am not prepared to admit. I shall not now discuss the question, whether the law may not place the tenure of office beyond the reach of executive pleasure; but I wish merely to draw the attention of the Senate to the fact, that any such power in Congress is denied by the principles and by the words of the protest. According to that paper, we live under a constitution, by the provisions of which the public treasures are, necessarily and unavoidably, always under executive control; and as the Executive may remove all officers, and appoint others, at least temporarily, without the concurrence of the Senate, he may hold those treasures, in the hands of persons appointed by himself alone, in defiance of any law which Congress has passed or can pass. It is to be seen, sir, how far such claims of power will receive the approbation of the country. It is to be seen whether a construction will be readily adopted which thus places the public purse out of the guardianship of the immediate representatives of the people.

But, sir, there is, in this paper, something even yet more strange than these extraordinary claims of power. There is, sir, a strong disposition, running through the whole protest, to represent the executive department of this Government as the peculiar protector of the public liberty, the chief security on which the people are to rely against the encroachment of other branches of the Government. Nothing can be more manifest than this purpose. To this end, the protest spreads out the President's official oath, reciting all its words in a formal quotation; and yet the oath of members of Congress is exactly equivalent. The President is to swear that he will "preserve, protect, and defend the constitution;" and members of Congress are to swear that they will "support the constitution." There are more words in one oath than the other, but the sense is precisely the same. Why, then, this reference to his official oath, and this ostentatious quotation of it? Would the writer of the protest argue that the oath itself is any grant of power; or that, because the President is to "preserve, protect, and defend the constitution," he is, therefore, to use what means he pleases, or any means for such preservation, protection, and defence, except those which the constitution and laws have specifically given him? Such an argument would be preposterous; but if the oath be not cited for this preposterous purpose, with what design is it thus displayed on the face of the protest, unless it be to support the general idea that the maintenance of the constitution and the preservation of the public liberties are especially confided to the safe discretion, the sure moderation, the paternal guardianship of executive power? The oath of the President contains three words, all of equal import; that is, that he will preserve, protect, and defend the constitution. The oath of members of Congress is expressed in shorter phrase; it is, that they will support the constitution. If there be any difference in the meaning of the two oaths, I cannot discern it; and yet the protest solemnly and formally argues thus: "The duty of defending, so far as in him lies, the integrity of the constitution, would, indeed, have resulted from the very nature of his office; but, by thus expressing it in the official oath or affirmation, which, in this respect, differs from that of every other functionary, the founders of our republic have attested their sense of its importance, and have given to it a peculiar solemnity and force."

Sir, I deny the proposition, and I dispute the proof. I deny that the duty of defending the integrity of the constitution is, in any peculiar sense, confided to the President; and I deny that the words of his oath furnish any argument to make good that proposition. Be pleased, sir, to remember *against whom it is* that the President holds it *his* peculiar duty to defend the integrity of the constitution. It is not against external force; it is not against a foreign foe; no such thing; *but it is against the representatives of the people and the representatives of the States.* It is against these, that the founders of our republic have imposed on him the duty of defending the integrity of the constitution; a duty, he says, of the importance of which they have attested their sense, and to which they have given peculiar solemnity and force, by expressing it in his official oath!

Let us pause, sir, and consider this most strange proposition. The President is the chief Executive Magistrate. He is commander-in-chief of the army and navy, nominates all persons to office, claims a right to remove all at will, and to control all, while yet in office, dispenses all favors, and wields the whole patronage of the Government. And the proposition is, that the duty of defending the integrity of the constitution against the representatives of the States, and against the representatives of the people, *results to him from the very nature of his office;* and that the founders of our republic have given to this duty, thus confided to him, peculiar solemnity and force!

Mr. President, the contest, for ages, has been to rescue liberty from the grasp of executive power. Whoever has engaged in her sacred cause, from the days of the downfall of those great aristocracies, which had stood between the King and the people, to the time of our own independence, has struggled for the accomplishment of that single object. On the long list of the champions of human freedom there is not one name dimmed by the reproach of advocating the extension of executive authority; on the contrary, the uniform and steady purpose of all such champions has been to limit and restrain it. To this end the spirit of liberty, growing more and more enlightened, and more and more vigorous from age to age, has been battering, for centuries, against the solid butments of the feudal system. To this end, all that could be gained from the imprudence, snatched from the weakness, or wrung from the necessities of crowned heads, has been carefully gathered up, secured, and hoarded as the rich treasures, the very jewels of liberty. To this end, popular and representative right has kept up its warfare against prerogative, with various success; sometimes writing the history of a whole age in blood, sometimes witnessing the martyrdom of Sidneys and Russells, often baffled and repulsed, but still gaining, on the whole, and holding what it gained with a grasp which nothing but the complete extinction of its own being could compel it to relinquish. At length, the great conquest over executive power in the leading western states of Europe has been accomplished. The feudal system, like other stupendous fabrics of past ages, is known only by the rubbish which it has left behind it. Crowned heads have been compelled to submit to the restraints of law; and the PEOPLE, with that intelligence and that spirit which make their voice resistless, have been able to say to prerogative, "Thus far shalt thou come, and no farther." I need hardly say, sir, that into the full enjoyment of all which Europe has reached only through such slow and painful steps, we sprang at once, by the declaration of independence, and by the establishment of free representative Governments; Governments, borrowing more or less from the models of other free States, but strengthened, secured,

improved in their symmetry, and deepened in their foundation, by those great men of our own country whose names will be as familiar to future times as if they were written on the arch of the sky.

Through all this history of the contest for liberty, executive power has been regarded as a lion which must be caged. So far from being the object of enlightened popular trust, so far from being considered the natural protector of popular right, it has been dreaded, uniformly, always dreaded, as the great source of its danger.

And now, sir, who is he, so ignorant of the history of liberty, at home and abroad; who is he, yet dwelling, in his contemplations, among the principles and dogmas of the middle ages; who is he, from whose bosom all original infusion of American spirit has become so entirely evaporated and exhaled, as that he shall put into the mouth of the President of the United States the doctrine that the defence of liberty *naturally results to* executive power, and is its peculiar duty? Who is he, that, generous and confiding towards power where it is most dangerous, and jealous only of those who can restrain it; who is he, that, reversing the order of the state, and up-heaving the base, would poise the pyramid of the political system upon its apex; who is he, that, overlooking with contempt the guardianship of the representatives of the people, and, with equal contempt, the higher guardianship of the people themselves; who is he, that declares to us, through the President's lips, that the security for freedom rests in executive authority? Who is he that belies the blood and libels the fame of his own ancestors, by declaring that *they*, with solemnity of form, and force of manner, have invoked the executive power to come to the protection of liberty? Who is he that thus charges them with the insanity, or the recklessness, of putting the lamb beneath the lion's paw? No, sir. No, sir. Our security is in our watchfulness of executive power. It was the constitution of this department, which was infinitely the most difficult part in the great work of creating our present Government. To give to the executive department such power as should make it useful, and yet not such as should render it dangerous; to make it efficient, independent, and strong, and yet to prevent it from sweeping away every thing by its union of military and civil authority, by the influence of patronage, and office, and favor: this, indeed, was difficult. They who had the work to do saw the difficulty, and we see it; and if we would maintain our system, we shall act wisely to that end, by preserving every restraint and every guard which the constitution has provided. And when we, and those who come after us, have done all that we can do, and all that they can do, it will be well for us and for them, if some popular Executive, by the power of patronage and party, and the power, too, of that very popularity, shall not hereafter prove an over-match for all other branches of the Government.

I do not wish, sir, to impair the power of the President, as it stands written down in the constitution, and as great and good men have hitherto exercised it. In this, as in other respects, I am for the constitution as it is. But I will not acquiesce in the reversal of all just ideas of Government; I will not degrade the character of popular representation; I will not blindly confide, where all experience admonishes me to be jealous; I will not trust executive power, vested in the hands of a single magistrate, to keep the vigils of liberty.

Having claimed for the Executive the especial guardianship of the constitution, the protest proceeds to present a summary view of the powers which are supposed to be conferred on the Executive by that instrument. And it is

to this part of the message, sir, that I would, more than to all others, call the particular attention of the Senate. I confess, that it was only upon careful re-perusal of the paper, that I perceived the extent to which its assertions of power reach. I do not speak, now, of the President's claims of power, as opposed to legislative authority, but of his opinions as to his own authority, duty, and responsibility, as connected with all other officers under the Government. He is of opinion that the whole executive power is vested in him, and that he is responsible for its entire exercise; that, among the duties imposed on him, is that of "taking care that the laws be faithfully executed;" and that "being thus made responsible for the entire action of the "executive department, it was but reasonable that the power of appointing, "overseeing, and controlling those who execute the laws—a power in its na-"ture executive—should remain in his hands. It is, therefore, not only his "right, but the constitution makes it his duty, to 'nominate, and by and with "the advice and consent of the Senate appoint,' all 'officers of the United "States whose appointments are not in the constitution otherwise provided "for,' with a proviso that the appointment of inferior officers may be vested "in the President alone, in the courts of justice, or in the heads of depart-"ments."

The first proposition, then, which the protest asserts, in regard to the President's powers, as Executive Magistrate, is, that the general duty being imposed on him by the constitution of taking care that the laws be faithfully executed, *he thereby becomes himself responsible for the conduct of every person employed in the Government;* "for the entire action," as the paper expresses it, "of the executive department." This, sir, is very dangerous logic. I reject the inference altogether. No such responsibility, nor any thing like it, follows from the general provision of the constitution, making it his duty to see the laws executed. If it did, we should have, in fact, but one officer in the whole Government. The President would be every body. And the protest assumes to the President this whole responsibility for every other officer, for the very purpose of making the President every body, of annihilating every thing like independence, responsibility, or *character* in all other public agents. The whole responsibility is assumed, in order that it may be more plausibly argued that all officers of Government are, not agents of the law, but the President's agents, and therefore responsible to him alone. If he be responsible for the conduct of all officers, and they be responsible to him only, then it may be maintained that such officers are but his own agents, his substitutes, his deputies. The first thing to be done, therefore, is to assume the responsibility for all; and this, you will perceive, sir, is done, in the fullest manner, in the passages which I have read. Having thus assumed for the President the entire responsibility of the whole Government, the protest advances boldly to its conclusion, and claims, at once, absolute power over all individuals in office, as being merely the President's agents. This is the language: "The whole executive power being vested in the President, "who is responsible for its exercise, it is a necessary consequence that he "should have a right to employ agents of his own choice, to aid him in the "performance of his duties, and to discharge them when he is no longer "willing to be responsible for their acts."

This, sir, completes the work. This handsomely rounds off the whole executive system of executive authority. First, the President has the whole responsibility; and then, being thus responsible for all, he has, and ought to have, the whole power. We have heard of political *units*, and our American Executive,

as here represented, is, indeed, a *unit*. We have a charmingly simple Government! Instead of many officers in different departments, each having appropriate duties, and each responsible for his own duties, we are so fortunate as to have to deal with but one officer. The President carries on the Government; all the rest are but sub-contractors. Sir, whatever *name* we give him, we have but ONE EXECUTIVE OFFICER. A Briareus sits in the centre of our system, and with his hundred hands touches every thing, moves every thing, controls every thing. I ask, sir, is this republicanism? is this a government of laws? is this legal responsibility?

According to the protest, the very duties, which every officer under the Government performs, are the duties of the President himself. It says that the President has a right to employ *agents* of his *own choice*, to aid HIM in the performance of HIS duties.

Mr. President, if these doctrines be true, it is idle for us any longer to talk about any such thing as a government of laws. We have no government of laws, not even the semblance or shadow of it; we have no legal responsibility. We have an Executive, consisting of one person, wielding all official power, and which is, to every effectual purpose, completely *irresponsible*. The President declares that he is "responsible for the entire action of the executive department." Responsible? What does he mean by being "*responsible?*" Does he mean *legal responsibility?* Certainly not. No such thing. Legal responsibility signifies *liability to punishment for misconduct or mal-administration* But the protest does not mean that the President is liable to be impeached and punished, if a Secretary of State should commit treason, if a Collector of the customs should be guilty of bribery, or if a Treasurer should embezzle the public money. It does not mean, and cannot mean, that he should be answerable for any such crime, or such delinquency. What, then, is its notion of that *responsibility*, which it says the President is under for all officers, and which authorizes him to consider all officers as his own personal agents? Sir, it is merely responsibility to public opinion. It is a liability to be blamed; it is the chance of becoming unpopular, the danger of losing a re-election. Nothing else is meant in the world. It is the hazard of failing in any attempt or enterprise of ambition. This is all the responsibility to which the doctrines of the protest hold the President subject.

It is precisely the *responsibility* under which Cromwell acted, when he dispersed Parliament, telling its members, not in so many words, indeed, that they disobeyed the will of their constituents, but telling them that the people were sick of them, and that he drove them out "for the glory of God, and the good of the nation." It is precisely the responsibility upon which Bonaparte broke up the popular assembly of France. I do not mean, sir, certainly, by these illustrations, to insinuate designs of violent usurpations against the President: far from it; but I do mean to maintain that such responsibility as that with which the protest clothes him, is no legal responsibility, no constitutional responsibility, no republican responsibility; but a mere liability to loss of office, loss of character, and loss of fame, if he shall choose to violate the laws and overturn the liberties of the country. It is such a responsibility as leaves every thing in his discretion, and his pleasure.

Sir, it exceeds human belief, that any man should put sentiments, such as this paper contains, into a public communication from the President to the Senate. They are sentiments which give us all one master. The protest asserts an absolute right to remove all persons from office, at pleasure; and for what reason? Because they are incompetent? Because they are incapable? Because they

are remiss, negligent, or inattentive? No, sir, these are not the reasons. But he may discharge them, one and all, simply because "he is no longer willing to be responsible for their acts!" It insists on an absolute right in the President to *direct and control* every act of every officer of the Government, except the judges. It asserts this right of direct *control*, over and over again. The President may go into the Treasury, among the auditors and controllers, and *direct* them how to settle every man's account; what abatements to make from one, what additions to another. He may go into the custom-house, among collectors and appraisers, and may *control* estimates, reductions, and appraisements. It is true, that these officers are sworn to discharge the duties of their respective offices honestly and fairly, according to their *own* best abilities; it is true, that many of them are liable to indictment for official misconduct, and others responsible, in suits of individuals, for damages and penalties, if such official misconduct be proved; but notwithstanding all this, the protest avers that all these officers are but the *President's agents*, that they are but aiding *him* in the discharge of *his* duties, that *he* is responsible for their conduct, and that they are removable at his will and pleasure. And it is under this view of his own authority, that the President calls the secretaries *his* secretaries, not once only, but repeatedly. After half a century's administration of this Government, sir, after we have endeavored, by statute upon statute, and by provision following provision, to define and limit official authority, to assign particular duties to particular public servants, to define those duties, to create penalties for their violation, to adjust, accurately, the responsibility of each agent, with his own powers and his own duties, to establish the prevalence of equal rule, to make the law, as far as possible, every thing, and individual will, as far as possible, nothing; after all this, the astounding assertion rings in our ears, that throughout the whole range of official agency, in its smallest ramifications, as well as in its larger masses, there is but ONE RESPONSIBILITY, ONE DISCRETION, ONE WILL! True indeed, is it, sir, if these sentiments be maintained, true indeed, is it, that a President of the United States may well repeat, from Napoleon, what he repeated from Louis the 14th, "I am the State."

The argument by which the writer of the protest endeavors to establish the President's claim to this vast mass of accumulated authority, is founded on the provision of the constitution, that the executive power shall be vested in the President. No doubt the executive power is vested in the President; but what, and how much executive power, and how limited? To this question I should answer, "look to the constitution and see; examine the particulars of the grant, and learn what that executive power is, which is given to the President, either by express words or by necessary implication." But so the writer of this protest does not reason. He takes these words of the constitution as being, of themselves, a general original grant of all executive power to the President, subject only to such express limitations as the constitution prescribes. This is clearly the writer's view of the subject, unless, indeed, he goes behind the constitution altogether, as some expressions would intimate, to search, elsewhere, for sources of executive power. Thus the protest says, that it is not only the *right* of the President, but that the constitution makes it his *duty*, to appoint persons to office; as if the *right* existed before the constitution had created the *duty*. It speaks, too, of the power of removal, not as a power *granted* by the constitution, but expressly as "an original executive power, *left* unchecked by the constitution. How original? Coming from what source higher than the constitution? I should be

glad to know how the President gets possession of any power by a title earlier, or more *original*, than the grant of the constitution; or what is meant by an *original* power, which the President possesses, and which the constitution has *left*, unchecked, in his hands. The truth is, sir, most assuredly, that the writer of the protest, in these passages, was reasoning upon the British constitution, and not upon the constitution of the United States. Indeed, he professes to found himself on authority, drawn from the constitution of England. I will read, sir, the whole passage. It is this:

"In strict accordance with this principle, the power of removal, which, "like that of appointment, is an original executive power, is left unchecked "by the constitution in relation to all executive officers, for whose conduct the "President is responsible; while it is taken from him in relation to judicial "officers, for whose acts he is not responsible. *In the Government from "which many of the fundamental principles of our system are derived, the "head of the executive department originally had power to appoint and "remove at will all officers, executive and judicial.* It was to take the "judges out of this general power of removal, and thus make them inde-"pendent of the Executive, that the tenure of their offices was changed to "good behavior. Nor is it conceivable why they are placed, in our con-"stitution, upon a tenure different from that of all other officers appointed "by the Executive, unless it be for the same purpose."

Mr. President, I do most solemnly protest (if I, too, may be permitted to make a protest) against this mode of reasoning. The analogy between the British constitution and ours, in this respect, is not close enough to guide us safely; it can only mislead us. It has entirely misled the writer of the protest. The President is made to argue, upon this subject, as if he had some right *anterior* to the constitution, which right is, by that instrument, checked, in some respects, and in other respects is left unchecked; but which, nevertheless, still derives its being from another source; just as the British King had, in the early ages of the monarchy, an uncontrolled right of appointing and removing all officers at pleasure; but which right, so far as it respects the judges, has since been checked and controlled by act of Parliament; the right being original and inherent, the *check* only imposed by law. Sir, I distrust altogether British precedents, authorities, and analogies, on such questions as this. We are not inquiring how far our constitution has imposed checks on a pre-existing authority. We are inquiring what extent of power that constitution has *granted*. The grant of power, the whole source of power, as well as the restrictions and limitations which are imposed on it, is made in and by the constitution. It has no other origin. And it is this, sir, which distinguishes our system so very widely and materially from the systems of Europe. *Our* Governments are limited Governments; limited in their origin, in their very creation; limited, because none but specific powers were ever granted either to any department of Government, or to the whole. *Theirs* are limited, whenever limited at all, by reason of restraints, imposed at different times, on Governments originally unlimited and despotic. Our American questions, therefore, must be discussed, reasoned on, decided, and settled, on the appropriate principles of our own constitutions, and not by inapplicable precedents, and loose analogies, drawn from foreign States.

Mr. President, in one of the French comedies, as you know, in which the dullness and prolixity of legal argument is intended to be severely satirized, while the advocate is tediously groping among ancient lore having nothing

to do with his case, the judge grows impatient, and at last cries out to him to *come down to the flood!* I really wish, sir, that the writer of this protest, since he was discussing matters of the highest importance to us as Americans, and which arise out of our own peculiar constitution, had kept himself, not only on this side the general deluge, but also on this side the Atlantic. I desire that all the broad waves of that wide sea should continue to roll between us and the influence of those foreign principles and foreign precedents, which he so eagerly adopts.

In asserting power for an American President, I prefer he should attempt to maintain his assertions on American reasons. I know not, sir, who the writer was, (I wish I did;) but, whoever he was, it is manifest that he argues this part of his case, throughout, on the principles of the constitution of England. It is true, that in England the King is regarded as the original fountain of all honor and all office; and that anciently, indeed, he possessed all political power of every kind. It is true that this mass of authority, in the history of that Government, has been diminished, restrained, and controlled by charters, by immunities, by grants, and by various modifications, which the friends of liberty have, at different periods, been able to obtain or to impose. All liberty, as we know, all popular privileges, as, indeed, the word itself imports, were formerly considered as favors and concessions from the monarch. But whenever and wherever civil freedom could get a foothold, and could maintain itself, these favors were turned into rights. Before and during the reigns of the princes of the Stuart family, they were acknowledged only as favors or privileges, graciously allowed, although, even then, whenever opportunity offered, as in the instance to which I alluded just now, they were contended for as rights; and by the revolution of 1688, they were acknowledged as rights in England, by the prince who then ascended the throne, and as the condition on which he was allowed to sit upon it. But, with us, there never was a time when we acknowledged original, unrestrained, sovereign power over us. Our constitutions are not made to limit and restrain pre-existing authority. They are the instruments by which the people confer power on their own servants. If I may use a legal phrase, the people are grantors, not grantees. They give to the Government, and to each branch of it, all the power it possesses, or can possess; and what is not given, they retain. In England, before her revolution, and in the rest of Europe since, if we would know the extent of liberty or popular right, we must go to grants, to charters, to allowances, and indulgencies. But, with us, we go to grants and to constitutions to learn the extent of the powers of Government. No political power is more original than the constitution; none is possessed which is not there granted; and the grant, and the limitations in the grant, are in the same instrument.

The powers, therefore, belonging to any branch of our Government, are to be construed and settled, not by remote analogies, drawn from other Governments, but from the words of the grant itself, in their plain sense and necessary import, and according to an interpretation consistent with our own history and the spirit of our own institutions. And I will never agree that a President of the United States holds the whole undivided power of office in his own hands, upon the theory that he is responsible for the entire action of the whole body of those engaged in carrying on the Government and executing the laws. Such a responsibility is purely ideal, delusive, and vain. There is, there can be, no substantial responsibility, any farther than every individual is answerable, not merely in his reputation, not merely in the opinion of mankind, but to *the law*, for the faithful discharge of his own appro-

priate duties. Again and again we hear it said that the President is responsible to the American people! that he is responsible to the bar of public opinion! For whatever he does, he assumes accountability to the American people! For whatever he omits, he expects to be brought to the high bar of public opinion! And this is thought enough for a limited, restrained, republican Government! An undefined, undefinable, ideal responsibility to the public judgment! Sir, if all this mean any thing, if it be not empty sound, it means no less than that the President may do any thing and every thing which he may expect to be tolerated in doing. He may go just so far as he thinks it safe to go; and Cromwell and Bonaparte went no farther. I ask again, sir, is this legal responsibility? Is this the true nature of a Government with written laws and limited powers? And allow me, sir, to ask, too, if an Executive Magistrate, while professing to act under the constitution, is restrained only by this responsibility to public opinion, what prevents him, on the same responsibility, from proposing a change in that constitution? Why may he not say, "I am about to introduce new forms, new principles, and with a new spirit; I am about to try a political experiment, on a great scale; and when I get through with it, I shall be responsible to the American people, I shall be answerable to the bar of public opinion?"

Connected, sir, with the idea of this airy and unreal responsibility to the public, is another sentiment, which, of late, we hear frequently expressed; and that is, *that the President is the direct representative of the American people.* This is declared, in the protest, in so many words: "The President," says the protest, "*is the direct representative of the American people.*" Now, sir, this is not the language of the constitution. The constitution no where calls him the representative of the American people, still less their direct representative. It could not do so with the least propriety. He is not chosen directly by the people, but by a body of electors, some of whom are chosen by the people, and some of whom are appointed by the State Legislatures. Where, then, is the authority for saying that the President is the *direct representative of the people?* The constitution calls the members of the other House Representatives, and declares that they shall be chosen by the people; and there are no other direct or immediate representatives of the people in this Government. The constitution denominates the President simply the President of the United States; it points out the complex mode of electing him, defines his powers and duties, and imposes limits and restraints on his authority. With these powers and duties, and under these restraints, he becomes, when chosen, President of the United States. That is his character, and the denomination of his office. How is it, then, that on this official character, thus cautiously created, limited, and defined, he is to engraft another, and a very imposing character, viz: the character *of the direct representative of the American people?* I hold this, sir, to be mere assumption, and dangerous assumption. If he is the representative of *all* the American people, he is the only representative which they all have. Nobody else presumes to represent all the people. And if he may be allowed to consider himself as the SOLE REPRESENTATIVE OF ALL THE AMERICAN PEOPLE, and is to act under no other responsibility than such as I have already described, then I say, sir, that the Government (I will not say the people) has already a master. I deny the sentiment, therefore, and I protest against the language; neither the sentiment nor the language is to be found in the constitution of the country; and whosoever is not satisfied to describe the powers of the President in the language of the constitution, may be justly suspected of being as little satisfied with the powers

themselves. The President is President. His office and his name of office are known, and both are fixed and described by law. Being commander of the army and navy, holding the power of nominating to office and removing from office, and being, by these powers, the fountain of all patronage and all favor, what does he not become if he be allowed to superadd to all this, the character of single representative of the American people? Sir, he becomes, what America has not been accustomed to see, what this constitution has never created, and what I cannot contemplate, but with profound alarm. He who may call himself the single representative of a nation, may speak in the name of the nation; may undertake to wield the power of the nation; and who shall gainsay him, in whatsoever he chooses to pronounce as the nation's will?

I will now, sir, ask leave to recapitulate the general doctrines of this protest, and to present them together. They are:

That neither branch of the Legislature can take up, or consider, for the purpose of censure, any official act of the President, without some view to legislation or impeachment;

That not only the passage, but the discussion of the resolution of the Senate of the 28th of March, was unauthorized by the constitution, and repugnant to its provisions;

That the custody of the public treasury always must be intrusted to the Executive; that Congress cannot take it out of his hands, nor place it any where, except with such superintendents and keepers, as are appointed by him, responsible to him, and removable at his will;

That the whole executive power is in the President, and that, therefore, the duty of defending the integrity of the constitution *results to him from the very nature* of his office; and that the founders of our republic have attested their sense of the importance of this duty, and, by expressing it in his official oath, have given to it peculiar solemnity and force;

That as he is to take care that the laws be faithfully executed, he is thereby made responsible for the entire action of the executive department, with power of appointing, overseeing, and *controlling* those who execute the laws;

That the power of removal from office, like that of appointment, is an *original* executive power, and is *left* in his hands, *unchecked* by the constitution, except in the case of judges; that, being responsible for the exercise of the whole executive power, he has a right to employ agents of his own choice, to assist *him* in the performance of *his* duties, and to discharge them when he is no longer willing to be responsible for their acts;

That the secretaries are *his* secretaries, and all persons appointed to offices created by law, except the judges, *his* agents, responsible to him, and removable at his pleasure;

And, finally, that he is the *direct representative of the American people.*

These, sir, are some of the leading propositions, contained in the protest; and if they be true, then the Government under which we live is an elective monarchy. It is not yet absolute, there are yet some checks and limitations in the constitution and laws; but in its essential and prevailing character it is an elective monarchy.

Mr. President, I have spoken freely of this protest, and of the doctrines which it advances; but I have said nothing which I do not believe. On these high questions of constitutional law, respect for my own character, as well as a solemn and profound sense of duty, restrains me from giving utterance to a single sentiment which does not flow from entire conviction. I

feel that I am not wrong. I feel that an inborn and inbred love of constitutional liberty, and some study of our political institutions, have not, on this occasion, misled me. But I have desired to say nothing that should give pain to the Chief Magistrate, personally. I have not sought to fix arrows in his breast; but I believe him mistaken, altogether mistaken, in the sentiments which he has expressed; and I must concur with others in placing on the records of the Senate my disapprobation of those sentiments. On a vote, which is to remain so long as any proceeding of the Senate shall last, and on a question which can never cease to be important while the constitution of the country endures, I have desired to make public my reasons. They will now be known, and I submit them to the judgment of the present and of after times. Sir, the occasion is full of interest. It cannot pass off without leaving strong impressions on the character of public men. A collision has taken place, which I could have most anxiously wished to avoid; but it was not to be shunned. We have not sought this controversy; it has met us, and been forced upon us. In my judgment, the law has been disregarded, and the constitution transgressed; the fortress of liberty has been assaulted, and circumstances have placed the Senate in the breach; and, although we may perish in it, I know we shall not fly from it. But I am fearless of consequences. We shall hold on, sir, and hold out, till the people themselves come to its defence. We shall raise the alarm, and maintain the post, till they, whose right it is, shall decide whether the Senate be a faction, wantonly resisting lawful power, or whether it be opposing, with firmness and patriotism, violations of liberty and inroads upon the constitution.

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